In both the High Court and the Federal Court, reliance was sought to be placed on various instructions issued by the Malaysian Insurance Association to its members, of which the China Insurance Company was one. These, as the Federal Court pointed out, were *res inter alios acta* and this line of argument was not proceeded with before their Lordships' Board. So the only question left in issue is whether the policy issued with section II, clause 2(b), deleted did conform to the bargain that Mr. Lim had made, on behalf of the insurance company, with Mr. Pang.

In their Lordships' view, Hashim Yeop A. Sani J. and the Federal Court were clearly right in holding that it did. The proposal form was a request by Mr. Pang for a "comprehensive" cover in respect of a particular vehicle, the Volvo which he had just bought. In their Lordships' view, a comprehensive policy in respect of a vehicle is one which covers all risks arising out of the use of that particular vehicle and does not necessarily incorporate an extension to cover the liability of the assured to third parties when driving any other private car. The cover note issued on behalf of the company by Mr. Lim in response to that proposal was expressed to cover the risk "in terms of the Company's usual form of Comprehensive Policy". It was proved in evidence that the company's usual form of comprehensive policy did not incorporate any such extension and Mr. Pang, who had previously been insured in respect of his previous car under a comprehensive policy in the China Insurance Company's usual form, knew or ought to have known that it was one in which section II, clause 2(b), was deleted.

Their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed and that the appellant must pay the respondents' costs of this appeal.

Appeal dismissed.

Solicitors: *Philip Conway Thomas & Co.; Le Brasseur & Oakley.*

SINGAPORE REPORTS

ONG BENG HOW v. GUAN SENG SAWMILL (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Choor Singh and Kulasekaram JJ.) November 27, 1975]
[Singapore — Civil Appeal No. 24 of 1975]

Labour Law — Factories — Injury from dangerous part of machinery — Unfenced machinery — Careless or inattentive worker — Whether contributory negligence — Factories Act (Cap. 123), s. 22(1).

Torts — Negligence — Machinery unfenced in factory — Careless or inattentive worker — Whether contributory negligence.

Factories — Machinery unfenced — Factories Act (Cap. 123), s. 22(1).

Machinery — Unfenced — Careless or inattentive worker — Factories Act (Cap. 123), s. 22(1).

In this case the appellant was employed by the respondents. He was cutting pieces of timber by means of a power saw when his left forearm came into contact with its circular saw blade and he received an injury which necessitated the amputation of his left hand above the wrist. The learned trial judge found that the respondents were in breach of their statutory duty under section 22(1) of the Factories Act in that they had not securely fenced the power-driven circular saw blade, which was clearly a 'dangerous' part' of the power saw unit. He found however that as the appellant was "unable to give a coherent account of how the accident occurred" he must have been inattentive and careless and he was therefore contributorily negligent to the extent of 50%. The appellant appealed.

Held, allowing the appeal: (1) even assuming that the appellant was inattentive or careless, such conduct, could not constitute contributory negligence in this type of case where there had been a breach of statutory duty. Fencing is intended to protect not only the prudent, alert and skilled operator intent upon his task but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part;

(2) the appellant having established the respondent's breach of statutory duty which gave him a right to damages, it was for the respondents to prove contributory negligence and this they had failed to do;

(3) on the evidence in this case, the learned trial judge was not justified in drawing the inference that the appellant was guilty of contributory negligence.

Cases referred to:-

(1) *Tay Cheng Teck v. Tropical Produce Co. Pte. Ltd.* [1971] 2 M.L.J. 247, 249.

(2) *John Summers & Sons* v. *Frost* [1955] A.C. 740.

(3) *Ng Kay Thiam & Anor.* v. *Redhill Paper Converters Ltd.* [1971] 2 M.L.J. 256.

(4) *Caswell* v. *Powell Duffryn Associated Collieries Limited* [1940] A.C. 152.

(5) *Staveley Iron & Chemical Co. Ltd.* v. *Jones* [1956] A.C. 627.

In the court below (Suit No. 128 of 1974) *Karuppan Chettiar* appeared for the plaintiff and *Patrick Ong* for the defendants. The following judgment was delivered:

D'Cotta J.: The plaintiff's claim is for damages for personal injuries and consequential loss suffered by him and occasioned to him on April 16, 1973 in the course of his employment with the defendants as a factory hand at the defendant's sawmill at Lorong Bistari, Singapore by the negligence of the defendants their servants or agents in the conduct and management of the said sawmill and/or breach by the defendants of their duty as employers of the plaintiff to

take reasonable care for his safety and/or breach by the defendants of statutory duty under the Factories Act 1973.

At the conclusion of the hearing, judgment was entered for the plaintiff but I found him guilty of contributory negligence and assessed liability at 50%. The plaintiff now appeals against such part only of the said decision as decides that the plaintiff had contributed to the negligence of the defendants and that contribution was to the extent of 50%.

The facts are as follows. On or about April 16, 1973, the plaintiff, Ong Beng Hou, who was then 19 years of age, was employed by the defendants as a factory hand in their sawmill. On that day he was cutting timber with a power saw when an accident occurred. According to the plaintiff, he was engaged by the defendants 3 days before the accident. His duty on the first day was to pick up odd pieces of timber and stack them, and on the third day he was asked to operate a power saw and was never taught how to operate it. On the day in question, at 2.30 p.m. that afternoon he placed the timber into position and operated the power saw in the usual way. He was standing closer to the power saw than the man shown in photograph AP4. (Photographs AP1-6 show clearly the operation of the power saw in the correct procedure). His left hand was much nearer to the saw than the left hand of the man as shown in AP4. (Witness demonstrates to the court where his left hand was placed in relation to the power saw: the Interpreter states the left hand was one inch away from the saw from the witness' demonstration). He then threw the piece of wood on the right on the floor. The saw went back into position when he pushed the handle back and with his left hand he pushed the timber on his left to the right. The power saw then suddenly moved towards him without his touching the handle. He was still in the process of pushing the wood on his left to the right with his left hand when the power saw hit his left hand.

According to paragraph 5 of the pleadings it was alleged that on April 16, 1973 the plaintiff in the course of his work and in accordance with the said system of work was by hand placing and/or positioning planks on the bench when his left wrist came into contact with the revolving saw blade.

Giving evidence on behalf of the plaintiff was one Mr. Lee Kok Seong (PW2) a Factory Inspector attached to the Ministry of Labour to whom the plaintiff gave a statement — Exhibit D1 in which it was mentioned that the plaintiff was wearing a long sleeve shirt at the time of the accident. A Notice of Accident was filed by the defendants on April 17, 1973 and after investigations PW2 made a report on November 7, 1973 the relevant portion of which is produced below:—

"The injured who was interviewed in this Inspectorate on June 7, 1973 was unable to recall exactly on how the accident happened. According to the injured the crosscut saw was guarded at the time of accident and on the day of the accident he was wearing a long sleeve shirt. From the investigation and interview it is believed that when the injured was positioning the sawn timber on the sawing table his sleeve was suddenly caught by the saw blade and his left forearm was pulled in and cut off by the saw blade. Investigation also found that the crosscut saw was inadequately guarded and without having the return spring or counter weight.'

This is a different version.

The plaintiff's evidence cannot be reconciled with his pleadings and I find it somewhat unreliable and vague as there would appear to be two or three versions. When he was vigorously cross-examined as to the correct version of the accident, he came out with yet another version and this time attributed it to "there were pieces of wood on that day behind the power saw and when I pushed the power saw back, it hit the wood and came forward again" and "because of the pieces of wood began accumulating I had to use more force". Under further cross-examination this is what he had to say:—

"Q. At the time of the accident you operated the power saw as you did in the morning.
A. Yes.
Q. Each time you pushed the handle back.
A. Yes.
Q. You did this hundreds of times before the accident.
A. Some tens of times.
Q. You pushed the handle at the time of the accident in the same way and with the same force.
A. That is so.
Q. Why didn't the accident occur when you did it tens of times.
A. I can't explain."

We now come to deal with the report of the Factory Inspector — Exhibit D2 and the report made to him by the plaintiff — D1. From these two reports the court could not help but draw the inference that the plaintiff must have given the Inspector the impression that his long sleeve shirt was the cause of the accident and that was why the Inspector made his report D2 stating that the cause of the accident might be due to his long sleeve shirt being caught in the saw blade. This is yet another version.

Furthermore, the plaintiff in the course of his evidence, demonstrated to the court the manner in which he was operating the power saw by placing his left hand one inch next to the revolving blade. Under cross-examination this is what he said:—

"Q. Do you think one inch from the saw blade a safe distance.
A. No.
Q. You knew it was dangerous.
A. Yes.
Q. You took the risk, knowing that it was dangerous to have your left hand one inch from the power saw.
A. No answer.
Q. In the morning your left hand was far away from the power saw.
A. That is so.
Q. You know the power blade revolves at a terrific speed.
A. Yes.
Q. You knew it was dangerous.
A. Yes.
Q. In spite of this you put your left hand one inch from it.
A. No answer."

We now come to the defendants' version of the accident. The evidence of the defendants was a straight forward one and it came from DW3 Mr. Khor Hui Seng, formerly employed by the defendants as a supervisor. This is what he had to say:

"My duty includes instructing other workers how to do their work. I supervise the workers at the factory. I know the plaintiff. He was working in the firm at least 10 working

days before the accident. I instructed him on the use of the power saw. Although he was employed by someone else in operating a power saw, nevertheless I explained to him two or three times how to operate it. After my instructions I asked the plaintiff to show me how it was operated and he did so to my satisfaction."

Mr. Khor confirmed that if a person operated the power saw as in photographs AP1-6 an accident should not occur. Mr. Khor then went on to explain in detail how a power saw should be operated. First, there is a bench. Strips of wood had to be placed on the bench and arranged neatly as shown in AP1. Assuming that part of the timber on the right of "X" in AP1 is unwanted then it would be placed under the saw at the point "X". The purpose of putting it under the saw is for it to be cut and separate the good wood from the bad wood. The good timber would be on the left side as shown in AP1 and the bad on the right. Sometimes it could be the other way round. After putting the strip of wood on the bench with the right hand one would switch on the saw as shown in AP2. Then, as shown in AP3, one would draw the handle towards oneself. This cuts the timber as shown in AP4. After the timber is cut one pushes back the handle as shown in AP5. Then turn off the switch as shown in AP6. In this way there could never be an accident.

It is pertinent to note that the plaintiff was adamant about the fact that he had been working in this factory for only 3 days when he was asked to operate the power saw. However, Mr. Tay Ah Hin (DW2) who was then employed by the defendants as an office clerk whose duty was to take charge and record odd job labourers and to select timber, gave evidence to the contrary. In his evidence, Mr. Tay produced a record of employment of odd job labourers — Exhibit D3. According to D3 the plaintiff started work on March 5, 1973 with the defendants and he was employed more than a month by the defendants when the accident occurred.

It would appear from the evidence that the plaintiff was not telling the truth when he said he was employed for only 3 days and that he was never taught how to operate the power saw as I believed the evidence of DW2 and DW3. In any event, he himself admitted that he had watched others operating the power saw and he himself operated the power saw without any trouble on the morning of the accident and even before that day.

In *Tay Cheng Teck* v. *Tropical Produce Co. Pte. Ltd.*[1] at page 249, Chua J. found that the plaintiff in that case "failed to pay proper attention to his work and in forcing the rubber between the rollers knowing it was unsafe to do so" and held the plaintiff was guilty of contributory negligence to the extent of 50%.

Having heard the evidence of the plaintiff and the defendants, I find that the plaintiff by virtue of the fact that he was unable to give a coherent account of how the accident actually occurred, was inattentive and careless while operating the power saw and furthermore had placed his hand one inch from the saw blade knowing full well that it was dangerous to do so and it was for this reason that I found him guilty of contributory negligence to the extent of 50%.

From the above judgment the plaintiff appealed to the Court of Appeal.

COURT OF APPEAL.

H.E. Cashin for the appellant.

K.E. Hilborne and *Patrick Ong* for the respondents.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the Court): This appeal arises from a claim made by the appellant against the respondents for damages for personal injuries which were alleged to have been caused by the negligence and breach of statutory duty of the respondents in the conduct and management of a sawmill on their premises.

The appellant who was 17 years of age at the time of this accident, was employed by the respondents as a factory hand at their sawmill at Lorong Bistari, Singapore. On the 16th day of April 1973, the appellant was cutting pieces of timber by means of a power saw when his left forearm came into contact with its circular saw blade and he received an injury which necessitated the amputation of his left hand above the wrist.

The power-driven circular saw blade which injured the appellant was clearly a "dangerous part" of the power saw unit within the meaning of section 22(1) of the Factories Act (Cap. 123). This section is similar to section 14(1) of the English Factories Act, 1937 and it imposes on an employer an absolute duty to securely fence any dangerous part of any machinery so that the operator of the machinery does not come into contact with the dangerous part. See the decision of the House of Lords in *John Summers & Sons* v. *Frost*,[2] and the decision of this court in *Ng Kay Thiam & Anor.* v. *Redhill Paper Converters Ltd.*[3] It is however clear on the authority of *Caswell* v. *Powell Duffryn Associated Collieries, Limited*,[4] that it is open to the court to find an element of contributory negligence in the conduct of the plaintiff in an action based upon a breach of statutory duty as in an action based on common law negligence.

The trial judge found that the respondents were in breach of their statutory duty under section 22(1) of the Factories Act in that they had not securely fenced the power-driven circular saw blade. This was in fact conceded by counsel for the respondents in his submissions at the close of the case for the respondents. The only issue before the trial judge, as it is again before this court, was whether, on the evidence, the appellant was guilty of contributory negligence.

The trial judge found the appellant contributorily negligent to the extent of 50 per cent and it is against this finding that the appellant now appeals. It is therefore necessary to examine the evidence in this case to see whether the trial judge's finding is supported by the evidence.

The power saw unit on which the appellant was working comprises *inter alia* an electric motor, connecting gear and a circular saw blade and as can be seen from the photographs tendered at the trial as exhibits this unit is mounted immediately above

and to the rear of a bench in front of which the operator stands. The unit is a traversing one in that it is designed so that the operator can by pulling a handle affixed to the unit, cause the circular saw blade to move forward horizontally over the bench and by pushing the handle cause it to resume its position at the rear of the bench. The circular saw blade has a cover or guard mounted over it which does not go right down to the level of the bench. There is a gap which has been estimated as two inches in height. When the power is switched on by pressing a button the circular saw blade rotates at great speed and when it is moved forward by pulling the handle, the circular saw blade makes a cut across any wood lying in its path on the bench.

The appellant's version of the accident was as follows:—

"... Having put the timber to be sawed in the position as shown in AP1, I would hold the timber with my left hand somewhat similar to the man in AP1 except that he is holding with his fingers which is not right. AP3 shows two buttons, one coloured red on the right which is the on-switch and the other coloured black on the left which is the off-switch. I would then put on the switch and pull the handle in AP3 and AP4 as the man in those pictures is doing. I would pull the handle towards me. The saw would then cut the timber into two. I would then pick up the piece of timber on my right and place it on the floor. I would then push the handle away from me and the saw goes back into position. With my left hand I would pick up the piece of wood which I was holding and also place it on the floor. Then I would carry another piece of wood, place it into position and the operation would proceed again. At 2.30 p.m. that afternoon I placed the timber into position and operated the power saw in the usual way. I was standing closer to the saw than the man in AP4. My left hand was much nearer to the saw than the left hand of the man shown in AP4. I then threw the right piece of wood on the floor. The saw went back into position when I pushed the handle back and with my left hand I pushed the timber on my left to the right. The power saw then suddenly moved towards me without me touching the handle. I was still in the process of pushing the wood on my left to the right with my left hand when the power saw hit my left hand. As the result of the accident my left forearm had to be amputated ...."

The respondents did not tender any evidence to show how the accident occurred. They were unable to do so because the appellant was working alone and no one else saw the accident. It was suggested to the appellant in cross-examination that he was wearing a long-sleeved shirt; that the left hand sleeve of his shirt was not buttoned; that the unbuttoned sleeve was caught by the rotating circular saw blade and that as a result his left hand was dragged against and crushed by the saw blade. The appellant denied this. He stated that he was wearing gloves and that his sleeves were inside his gloves. But the appellant admitted that he had placed his hand on the piece of timber he was cutting, about one inch away from the saw blade.

The appellant was questioned, over and over again, as to how or why the saw blade, having been pushed back, came forward and cut his left hand. He was unable to give any satisfactory explanation and kept repeating "I don't know".

On this evidence the trial judge has found that the appellant had contributed to the accident by his negligence. He has expressed this finding as follows:—

"... Having heard the evidence of the plaintiff and the defendants, I find that the plaintiff by virtue of the fact that he was unable to give a coherent account of how the accident actually occurred, was inattentive and careless while operating the power saw and furthermore had placed his hand one inch from the saw blade knowing full well that it was dangerous to do so and it was for this reason that I found him guilty of contributory negligence to the extent of 50 per cent...."

The trial judge has surmised that because the appellant "was unable to give a coherent account of how the accident actually occurred", he must have been inattentive and careless. That, in our opinion, is not a valid inference, but assuming that the appellant was inattentive or careless, such conduct, according to the authorities, does not constitute contributory negligence in this type of case where there has been a breach of statutory duty. The appellant's placing of his hand one inch away from the saw blade is also not evidence of negligence.

We need not go through all the cases which have laid down that fencing is intended to protect not only the prudent, alert and skilled operator intent upon his task, but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part. Ever since the decision of the House of Lords in *Caswell* v. *Powell Duffryn Associated Collieries, Limited, supra,* inadvertent acts have been held to be insufficient to constitute contributory negligence on the part of the workmen. That case decided, with regard to cases of breach of statutory duty, that what may be called excusable lapses do not amount to contributory negligence. Lord Wright said, at page 179, "The policy of the statutory protection would be nullified if a workman were held debarred from recovering because he was guilty of some carelessness or inattention to his own safety, which though trivial in itself threw him into the danger consequent on the breach by his employer of the statutory duty".

A good example of carelessness can be found in *John Summers & Sons Ltd.* v. *Frost, supra,* where a skilled fitter held a piece of metal too near to a grinding wheel and injured his thumb. He was exonerated from blame by the House of Lords and succeeded in recovering full damages against his employers.

This lenient standard of care required from workmen, sometimes described as the *Caswell* doctrine, was explained by Lord Tucker in *Staveley Iron & Chemical Co. Ltd.* v. *Jones,*[5] which is another case which went to the House of Lords. Lord Tucker said, at page 648:—

"It is true that, in accordance with what was said in this House in *Caswell's* case, there may be cases, such as those involving breach of statutory duty, where an employer who is in breach of his duty cannot be heard as against his own servant who has been injured thereby to say that some risky act due to familiarity with the work or some inattention resulting from noise or strain amounts to contributory negligence.... In Factory Act cases the purpose of imposing the absolute obligation is to protect the workmen against those very acts of inattention which are sometimes relied upon as constituting contributory negligence so that too strict a standard would defeat the object of the statute."

The accident in the present case was just the type of accident against which section 22(1) of the Factories Act is directed. The appellant having established the respondents' breach of statutory duty which gave him a right to damages, it was for the respondents to prove

contributory negligence against him. In our opinion, this they failed to do.

In our judgment, on the evidence in this case, the trial judge was not justified in drawing the inference that the appellant was guilty of contributory negligence. Accordingly the appeal is allowed. There will be judgment for the appellant against the respondents in the sum of $53,614 and costs of this appeal as taxed.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Ong & Chellam.*

M.M. SMITH v. GOLDHILL PROPERTIES (PTE) LTD.

[O.C.J. (Chua J.) February 28, 1978]
[Singapore — Civil Suit No. 2485 of 1975]

Revenue Law — Property tax payable by owner — Property tax deposit paid to developers by purchaser — Subsequent payment by purchaser to Comptroller — Whether purchaser entitled to refund of deposit from developers — Property Tax Act (Cap. 144), ss. 6(2) & (3), & 17(1).

Housing Developers, — Property tax — Whether developers entitled to retain purchaser's property tax deposit — Payment of property tax already made by purchaser to Comptroller — Property Tax Act (Cap. 144), ss. 6(2) & (3), & 17(1).

The plaintiff in this case had purchased three premises from the defendants. There were three written agreements relating to the sale and it was an express term of the said agreements that the plaintiff would bear and pay all property taxes for the account of the three premises from the date of possession by the plaintiff of the said premises. The plaintiff paid $7,500 to the defendants as property tax deposit for the three premises and took possession of the said premises. Subsequently, on receipt of three Notices from the Comptroller of Property Tax addressed to the plaintiff, the plaintiff paid the property tax for the three premises amounting to $51,993.30. Thereafter the plaintiff made a written demand to the defendants for the refund of the deposit of $7,500. Despite reminders, the defendants had failed to refund the said deposit.

Held: the plaintiff as owner of the premises was entitled to the refund of the deposits against the property tax which were payable by the plaintiff and not the defendants.

CIVIL SUIT.

A.P. Godwin for the plaintiff.

Wong Peng Koon for the defendants.

Cur. Adv. Vult.

Chua J.: The defendants, Goldhill Properties (Pte) Ltd., were the developers of the office and shopping complex known as Goldhill Plaza at Thomson Road/Newton Road, Singapore.

By an agreement in writing made on March 26, 1971, and two separate agreements both made on December 13, 1971, between the plaintiff, Margaret McKenzie Smith, on the one part and the defendants of the other part, (the said agreements) premises provisionally known as Private Lot Nos. 9A, 10A and 11A, First Floor, Block A, of Goldhill Plaza, (the said three premises) were sold by the defendants to the plaintiff. The said three premises were subsequently renumbered as follows: —

(a) 9A became 19A, Goldhill Plaza;
(b) 10A became 21A, Goldhill Plaza;
(c) 11A became 23A, Goldhill Plaza.

It was an express term of the said agreements that the plaintiff would bear and pay all property taxes for the account of the said three premises from the date of possession by the plaintiff of the said three premises henceforth.

By two letters both dated October 26, 1973, to the plaintiff, the defendants intimated that they would only hand over the set of keys of the said three premises (before the date of completion) to the plaintiff on payment by the plaintiff of, *inter alia*, the sum of $2,500 property tax deposit for each of the said three premises.

On November 12, 1973, the plaintiff signed three identical documents in respect of the said three premises prepared by the defendants and presented to the plaintiff to sign. Paragraph 4 of the documents provided that

"4. In consideration of your giving me/us possession of the said property now I/we hereby agree: —

(a) To bear and pay for from the date the keys are made available to me/us all property tax and assessments in respect of the said property or the relevant apportioned amount thereof if such, property tax or assessments are not separately assessed on the said property but in respect of property of which the said property forms part or on the land on which the said property has been built;

(b) ....

(c) I/We also agree to pay you now $2,500/- per unit for deposit against property tax or assessments which are payable by me/us or any arrears thereof; therefore the total deposit to be paid now by me for one unit is $2,500/-.

(d) ....

(e) ....

(f) ...."

The plaintiff paid $7,500 to the defendants as such property tax deposit for the said three premises and took possession of the said three premises on November 12, 1973.

On or about April 15, 1975, the plaintiff, instead of the defendants, received three Notices from the Comptroller of Property Tax addressed to the plaintiff, under the provisions of the Property Tax Act (Cap. 144) (the Act) for payment of property tax for all the said three premises for the period May 31, 1972, to June 30, 1975, totalling $51,993.30. The plaintiff paid the property tax.

On May 14, 1975, the plaintiff through her solicitors wrote to the defendants' solicitors requesting the repayment of the deposit of $7,500. Despite reminders the defendants have failed to refund to the plaintiff the said sum of $7,500 and the plaintiff commenced the present proceedings claiming the refund of the $7,500 and interest.

The contention of the plaintiff is that as soon as the Comptroller of Property Tax had made the assessment and requested the plaintiff to make payment the plaintiff is entitled to get a refund of the deposits for property tax from the defendants.

The contention of the defendants is that the deposits should only be refunded when the defendants cease to be liable to the Comptroller in any way.

The argument of counsel for the defendants is this. Section 17(1) of the Act provides that whenever any estate or interest in any house, building, land or